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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,446	10/20/2003	Karl J. Dobler	200302271-2	3377

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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P. O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/689,446

Applicant(s)

DOBLER ET AL.

Examiner

James O. Hansen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,10,11,16,17 and 23-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,10,11,16,17 and 23-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 30, 32 & 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Abbott [U.S. Patent No. 6,230,903]. Abbott (figures 1-5) teaches of a track assembly comprising: a first rail member (47) configured to receive a second (27) rail member expandably via a connecting member (23), the first and second rail members each having a distal end (outer-most ends) and an engaged end (inner-most ends); a biasing member (59) configured to bias the distal ends relative to one other; mounting bracket (55, 35 respectively) attached to the distal ends of the first and second rail members; and a locking mechanism (29, 31, 49 & 51 for example) configured to prevent relative movement between the distal ends. The locking mechanism is viewed as being “tool-lessly” operable in the sense that elements of the mechanism can be hand tightened.

3. Claims 30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Hubbard et al., [U.S. Patent No. 5,586,817]. Hubbard (figures 1-2) teaches of a track assembly comprising: a first rail member (60) configured to receive a second rail member (46) rail expandably, wherein the first and second rail members each include an engaged end (64, 50) located proximate to cooperating portions of the rail members, and a distal end located opposite the engaged end; a biasing member/compression spring (82) configured to bias the distal ends relative to one another; and a locking mechanism (70, 54 for example) configured to prevent relative movement between the

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distal ends (as viewed when element 70 is at either of the two most extreme positions with element 54). The locking mechanism is viewed as being “tool-lessly” operable in the sense that the mechanism needs no tools to operate. The locking mechanism comprising a tab (viewed as the elongated “tab portion” on end 52) located on the second rail and an actuable member (70) extending through both rail members for interlocking engagement with the tab via (54).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11 & 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klakovich [U.S. Patent No. 3,133,768] in view of Johnson [U.S. Patent No. 3,803,670]. Klakovich (figures 1-16) teaches of a track assembly adapted to be mounted in a rack, the sliding track assembly having a slide assembly (26, 27 e.g.,) mounted to a rail assembly (elements of 22 e.g.,), the rail assembly comprising: first (25) and second (29) rail members engaged with one another expandably, the first and second rail members each having a distal end (inner-most ends) located proximate to the rack; mounting brackets (slotted flanges on each rail member) attached to distal ends of the first and second rail members; and a locking mechanism (44 & 46) interacting with the first and second rail members, the locking mechanism having a locked configuration limiting collapsing movement of the rail members with respect to one another. Klakovich teaches applicant's inventive claimed structure as disclosed above, but does

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not show the locking mechanism as being “non-threaded”. Johnson (figures 1-5) is cited as an evidence reference to show that it was known in the art at the time the invention was made to utilize a “non-threaded” locking mechanism for fastening together adjacent members in a secure yet non-permanent manner. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the locking mechanism of Klakovich so as to substitute for the fastening device of Johnson because this arrangement would allow for the manual assembly of Klakovich’s rail members without the use of any tools while being reusable, durable and economically manufactured.

6. Claims 11, 16 & 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott in view of Johnson. Abbott teaches applicant’s inventive claimed structure as disclosed above including the sliding track assembly adapted to be mounted in a rack, the sliding track assembly having a slide assembly (21 e.g.,) mounted to a rail assembly (comprising rail members 27, 47 e.g.,), and mounting tabs (37) located on each of the mounting brackets; but Abbott does not show the locking mechanism as being “non-threaded”. Johnson (figures 1-5) is cited as an evidence reference to show that it was known in the art at the time the invention was made to utilize a “non-threaded” locking mechanism for fastening together adjacent members in a secure yet non-permanent manner. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the locking mechanism of Abbott so as to substitute for the fastening device of Johnson because this arrangement would allow for the manual assembly of Abbott’s rail members without the use of any tools while being reusable, durable and economically manufactured.

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7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klakovich in view of Abbott. Klakovich teaches applicants inventive claimed structure as disclosed above, but does not show the brackets having a mounting tab(s) so as to be received in a slot on the rack. However, Abbott teaches the known use of employing mounting tabs (37) on mounting brackets (35, 55) in an analogous art. As such, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the brackets of Klakovich so as to incorporate tabs as taught by Abbott because this arrangement would provide Klakovich with a positive seating connection between the brackets and the rails of the rack since the tabs would be "seated" within the mounting apertures as opposed to being loosely aligned and then secured.

#### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1, 4, 11, 17 and 23-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,702,412. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the claimed elements of the presently cited claims are disclosed in the claims of the patented publication.

10. Claims 2, 10 & 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,702,412 in view of Abbott. The `412 publication disclosed applicants claimed structure, but does not specifically claim "mounting tabs" on the brackets or a "slide assembly" in addition to the track assembly. However, Abbott teaches both of these features as previously disclosed. As such, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the brackets of the `412 publication so as to incorporate tabs and a slide assembly as taught by Abbott because this arrangement would provide `412 with a positive seating connection between the brackets and the rails of the rack since the tabs would be "seated" within the mounting apertures, while the slide assembly would provide a means on the track assembly of `412 for allowing linear movement of a rack component in relation to the rack.

11. Claim 3 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,702,412 in view of Reddicliffe [U.S. Patent No. 6,431,668]. The `412 publication disclosed

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applicants claimed structure, but does not specifically claim a “longitudinal slot” on the second rail member so as to be fastened to the first rail member via a fastener. However, Reddicliffe teaches of a first rail member (12) and a second rail member (16) having an elongated slot (18) that accepts a fastener (17) for the purpose of limiting the relative movement of the rail members with respect to each other. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the second rail member of the ‘412 publication so as to incorporate a slot as taught by Reddicliffe because this arrangement would provide ‘412 with a means to variably control the depth that the combined rail members produce linearly.

### ***Response to Arguments***

12. Applicant's arguments filed November 2, 2004 have been fully considered but they are not persuasive. In regards to applicant's remarks concerning the Klakovich reference note the following: it is viewed that the above rejections adequately address all the limitations as presently set forth. In regards to applicant's remarks concerning the Abbott reference note the following: it is viewed that the above rejections adequately address all the limitations as presently set forth; furthermore, it is viewed that elements 27 & 47 can be identified as “rail members” as noted above since this limitation may encompass a broad array of elements as opposed to applicant's citation that “27 and 47 are not rails” as noted on page 12 of the remarks; and it is viewed that the elements 27 & 47 may be “engaged with one another” and that element 27 may be “configured to receive the second rail member expandably” when viewed in combination with the connecting “slide assembly” structure as noted in the rejections



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[it is noted that the language as presently claimed does not recite that the rail members are slidably attached or connected to each other directly and may be expanded with respect to each other for example]. In regards to applicant's remarks concerning the Hubbard reference note the following: it is viewed that the above rejections adequately address all the limitations as presently set forth; furthermore, it is viewed that elements 60 & 46 can be identified as "rail members" as noted above since this limitation may encompass a broad array of elements; and it is viewed that element 60 may be "configured to receive the second rail member expandably" since the two elements are connected and move or "expand" via a scissor motion in relation to each other, the claim is devoid of any "linear movement" limitation as remarked by applicant; and it is viewed that elements 70 & 54 may constitute a "locking mechanism configured to prevent relative movement..." as broadly recited when viewed in the context as recited in the rejection {when in the most extreme positions - no movement occurs} or when viewed in relation to movement laterally of the distal ends [no lateral movement between ends].

### **Conclusion**

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 703-305-7414. The examiner can normally be reached on Mon.-Fri. 8-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
January 17, 2005